

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-126067-14

Date:

December 10, 2014

Legend

Debtor =

Trust =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Date8 =

Date9 =

Year1 =

Year2 =

Year3 =

a =

Dear \_\_\_\_\_ :

This responds to a letter dated June 23, 2014, submitted on behalf of Trust, requesting a ruling under § 301.7701-4(d) of the Procedure and Administration Regulations.

#### FACTS

The information submitted states that Debtor was formed on Date1, and filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court on Date2. On Date3, Debtor submitted to the Bankruptcy Court a Plan of Reorganization. On Date4, the Plan of Reorganization was confirmed by the Bankruptcy Court. On Date5, Trust was established and approved by the Bankruptcy Court to facilitate the liquidation of the estate. The initial term of Trust was for three years ending on Date6. On Date7, the Bankruptcy Court extended Trust's term until Date8.

Pursuant to the provisions of the trust agreement, Trust was created for the purpose of liquidating the assets of Trust, with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of Trust. Trust shall not receive or retain cash in excess of a reasonable amount to meet claims and contingent liabilities (including disputed claims) or to maintain the value of the assets during liquidation. Cash not available for distribution and cash pending distribution will be held in demand and time deposits, such as short term certificates of deposit, in banks or other savings institutions, or other temporary, liquid assets such as Treasury bills. Such investments must have a maturity date of six months or less. Trust is required, under the terms of Trust, to distribute to the beneficiaries of Trust at least annually its net income and all net proceeds from the sale of Trust's assets, except that Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the property or to meet claims or contingent liabilities.

Trust provides that the beneficiaries of Trust will be treated as the grantors and deemed owners of Trust. It further provides that the parties will value all assets transferred to Trust consistently and use such values for all federal income tax purposes.

Trust provides that the trustee of Trust shall file tax returns as a grantor trust pursuant to § 1.671-4(a) of the Income Tax Regulations. Forms 1041, U.S. Income Tax Return for Estates and Trusts, have been filed on behalf of Trust for Year1, Year2 and Year3.

Trust, consistent with the requirements set out in Rev. Proc. 94-45, 1994-2 C.B. 684, provides that the transfer of Trust assets to Trust will be treated for all federal tax purposes as a deemed transfer by Debtor to the beneficiaries followed by a deemed transfer by the beneficiaries to Trust.

Trust represents that, as of the date of its ruling request submission, Trust has distributed approximately a% of the assets of Trust to its beneficiaries. Trust further represents that, from its establishment, Trust has been formed and operated consistent with the conditions set forth in Rev. Proc. 94-45.

However, the Liquidating Trustee of Trust recently discovered that fraud was allegedly perpetrated by the Debtor's chief restructuring officer through fraudulent invoices, overpayment of fees, and other expenses. Trust represents that a review of the financials is required to assist in a criminal referral and action to recover the assets (funds) from Debtor's chief restructuring officer. A civil lawsuit against Debtor's chief restructuring officer in this matter has not been filed because the financial statement review and fraud investigation is ongoing. The remaining assets of Trust include certain causes of action that are the subject of litigation which are beyond the control of Trust or the liquidating trustee. Accordingly, Trust represents that it is impossible for Trust to completely liquidate by Date8.

Under Article VII of the trust agreement for Trust, multiple extensions of Trust's term may be obtained so long as Bankruptcy Court approval is obtained on a date within the period three months prior to the expiration of each extended term, and the extension is necessary to the liquidation of Trust assets in a manner that would maximize the value of such assets.

## LAW AND ANALYSIS

Section 301.7701-4(d) provides that certain organizations which are commonly known as liquidating trusts are treated as trusts for purposes of the Internal Revenue Code. An organization will be considered a liquidating trust if it is organized for the primary purpose of liquidating and distributing the assets transferred to it, and if its activities are all reasonably necessary to, and consistent with, the accomplishment of that purpose. A liquidating trust is treated as a trust for purposes of the Code if it is formed with the objective of liquidating particular assets and not as an organization having as its purposes the carrying of a profit-making business which normally would be conducted through business organizations classified as corporations or partnerships. However, if the liquidation is unreasonably prolonged or if the liquidation purpose becomes so obscure by business activities that the declared purpose of liquidation can be said to be lost or abandoned, the status of the organization will no longer be that of a liquidating trust.

Rev. Proc. 94-45 provides the conditions under which the Service will consider issuing advance rulings classifying certain trusts as liquidating trusts under § 301.7701-4(d).

Section 3.06 of Rev. Proc. 94-45 provides that the trust instrument must contain a fixed or determinable termination date that is generally not more than five years from the date of creation of the trust and that is reasonable based on all the facts and circumstances. If warranted by the facts and circumstances, provided for in the plan and trust instrument, and subject to the approval of the Bankruptcy Court with jurisdiction over the case upon a finding that the extension is necessary to the liquidating purpose of the trust, the term of the trust may be extended for a finite term based on its particular facts and circumstances. The trust instrument must require that each extension be approved by the court within 6 months of the beginning of the extended term.

## CONCLUSIONS

Rev. Proc. 94-45 states that the Service will issue a ruling classifying an entity created pursuant to a bankruptcy plan under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101, et seq. (1988), as a liquidating trust under § 301.7701-4(d) if certain specified conditions are met. Based on the information submitted and the representations made, we conclude that the conditions of Rev. Proc. 94-45 have been satisfied. Accordingly, based on the representations made and the information submitted, we rule that Trust will be classified for federal income tax purposes as a liquidating trust under § 301.7701-4(d) of the regulations.

Additionally, based on the facts and circumstances of this case and on the representations made, we rule that an extension of time of Trust's term to Date9 will not adversely affect the determination that Trust is a liquidating trust under § 301.7701-4(d).

Except as expressly set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted as part of the ruling request, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes

cc: